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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/852,810	Applicant(s) GAREAU ET AL.
	Examiner Susanna M. Diaz	Art Unit 3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

Status

- 1) Responsive to communication(s) filed on 08 September 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12,16-19,23-26,37,39,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12,16-19,23-26,37,39,41 and 42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/89/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 8, 2008 has been entered.

Claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 are pending.

Response to Arguments

2. Applicant's arguments filed September 8, 2008 have been fully considered but they are not persuasive.

Applicant argues, "Harte does not disclose or suggest, among other things, 'collecting responses from members of the organization reflecting a performance of implementing the first action in the organization,' as recited in claim 1...The cited portions of Harte appear to discuss identifying areas that require refocusing based on the initial survey results. Thus, Harte fails to disclose or suggest 'automatically selecting a first action corresponding to the identified at least one theme in reply to receiving the report, collecting responses from members of the organization reflecting a performance of implementing the first action in the organization, and sorting the collected responses to identify an effect of the implemented first action on the organization based on the

responses having a high frequency of occurrence." (Page 14 of Applicant's response)

Harte discloses that several areas of focus for organizational climate improvement are discussed and followed up on (¶¶ 4, 22-23). One proposed solution discussed in Harte involves the identification of customer requirements, definition of service standards, establishment of service delivery systems, and implementation of systems to monitor and measure success (¶ 27). A measurement of success may be obtained by asking clients to participate in surveys, follow-up interviews, or submit complaints (¶ 42). The organization is accountable to both the staff and clients (as seen in ¶ 36 of Harte), thereby implying that Harte's clients may too be recognized as "members of the organization" and that the customer service issues are linked to "service standards" (as seen in ¶ 27), which are clearly affected by staff performance (improvement of which is outlined in ¶¶ 4, 24-26). It should be noted that the "members of the organization" recited in the step of "collecting responses from members of the organization reflecting a performance of implementing the first action in the organization" does not necessarily have to be the same "members of the organization" recited in the step of "collecting responses from members of the organization" (the first limitation of claim 1) because no reference to antecedent basis (e.g., using a prefacing "the" or "said") is made in the latter recited "members of the organization."

Applicant argues, "This step [automatically selecting a first action corresponding to the identified theme in reply to receiving the report] does not involve performing calculations, data gathering, data analysis, or report generation, activities the Office Action alleges are well known in the art of data processing, which Applicant does not

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concede." (Pages 15-16 of Applicant's response) First, the Examiner explained that the word "automatically" has multiple possible interpretations, including "performed in immediate response to a previous step[s]" or "through use of a computer." The broadest reasonable interpretation may be applied to the claimed invention. Second, the assertion of Official Notice was made under the assumption that "selecting a first action corresponding to the identified theme in reply to receiving the report," when performed by humans, would necessarily require some sort of information processing or analysis (which does fall within the scope of the Official Notice statement). It has generally been recognized that broadly providing an automatic means to place a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner* 262 F.2d 91, 95 120 USPQ 193, 194 (CCPA 1958). As a matter of fact, using a computer to perform steps that the prior art discloses as commonly performed manually is simply "the adaptation of an old idea or invention...using newer technology that is commonly available and understood in the art...", as explained in *Leapfrog Enterprises, Inc. v. Fischer Price, Inc.*, 485 F.3d 1157, 82 USPQ2d 1687 (Fed. Cir. 2007) at 1691. The Leapfrog decision "found it obvious to combine the Bevan device [an earlier, more basic prior art device] with the SSR [a system with more modern electronic components] to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost." (*Leapfrog*, at 1691) This decision further supports the Examiner's assertion regarding the obviousness of performing manual steps using a computer.

Also, Examiner notes that, as per MPEP § 2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since Applicant has not traversed the Examiner's assertions of Official Notice. More specifically, the following statements of Official Notice are now formally established on record as admitted prior art:

Official Notice is taken that it was old and well-known in the art of data processing to utilize a computer to perform calculations, data gathering, data analysis, and report generation. The use of a computer facilitates more efficient, rapid, and less erroneous computations, data gathering, analysis, and reporting (as compared to human-performed operations).

Official Notice is taken that it was old and well-known in the art of assessing organizations to perform part of an assessment using data responses associated with a physical walk around session with at least one member of the organization. Walking around an organization gives an evaluator a more hands-on and comprehensive view of what is truly going on within the organization.

Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to communicate information to various people via a Web page. The use of Web pages to communicate information is a very fast and economical way of transmitting information to people located in various places, including locations throughout the world.

Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to average quantitative responses from each of various groups being compared in order to assess a representative opinion of each respective group.

Also, the Examiner has modified the art rejection to more clearly address the limitation regarding "sorting the collected responses..." in claim 1.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-12, 16-19, 23-26, and 41-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 1, 9, 16, and 23 recite two distinct examples of collecting responses in two different limitations. The last limitation of each claim refers to sorting "the collected responses." It is not clear to which collected responses the last limitation refers, thereby rendering the claims vague and indefinite.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-8, 37, 41, and 42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Comiskey explains that mental processes *per se* are not statutory under § 101. Mental processes must be tied into some other category of statutory subject matter in order to be potentially patentable under § 101. *Comiskey* specifically states, "However, mental processes -- or processes of human thinking -- standing alone are not patentable even if they have practical application." (See *In re Comiskey*, 84 USPQ2d, at 1678) *Comiskey* continues with the rationale that "the patent statute does not allow patents on particular systems that depend for their operation on human intelligence alone, a field of endeavor that both the framers and Congress intended to be beyond the reach of patentable subject matter. Thus, it is established that the application of human intelligence to the solution of practical problems is not in and of itself patentable." (See *In re Comiskey*, 84 USPQ2d, at 1679) Claims 1-8, 37, 41, and 42 are directed toward a mental process that is reliant on the operation of human intelligence and the process is not sufficiently tied to another statutory class nor does it transform underlying subject matter to a different state or thing; therefore, claims 1-8, 37, 41, and 42 do not fall into one of the statutory categories recognized as patentable under 35 U.S.C. § 101.

Applicant is reminded that a process must be tied into a machine designed specifically to perform the respective functionality and not just a general purpose machine. "Here the 'process' claim is so abstract and sweeping as to cover both known

and unknown uses of the BCD to pure-binary conversion. The end use may (1) vary from the operation of a train to verification of drivers' licenses to researching the law books for precedents and (2) be performed through any existing machinery or future-devised machinery or without any apparatus." (*Gottschalk, Comr. Pats. v. Benson et al.*, 175 USPQ 673, 675) This test is reiterated in the *Bilski* decision. "We acknowledge that the Supreme Court in Benson stated that the claims at issue 'were not limited ... to any particular apparatus or machinery.' 409 U.S. at 64. However, the Court immediately thereafter stated: '[The claims] purported to cover any use of the claimed method in a general-purpose digital computer of any type.' Id. And, as discussed herein, the Court relied for its holding on its understanding that the claimed process preempted all uses of the recited algorithm because its only possible use was on a digital computer. Id. at 71-72. The Diehr Court, in discussing Benson, relied only on this latter understanding of the Benson claims. See Diehr, 450 U.S. at 185-87. We must do the same." (*In re Bilski*, 88 USPQ2d 1385, 1389 (Fed. Cir. 2008)) In other words, if a claim recites a machine in such a manner that the claim is broad enough to read on any and every machine capable of performing the recited fundamental principle(s), it would not be a 'particular' machine. The metes and bounds of a 'particular' machine should be clearly recited so as to distinguish the 'particular' machine from another machine that could possibly perform the fundamental principle(s) of the claimed invention.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harte et al. ("Quality Improvement in a Safety, Engineering and Management Consultancy – Part 2") in view of Official Notice.

Harte discloses a method of assessing a culture of an organization for making improvements thereon (¶¶ 1, 4), comprising the steps of:

[Claim 1] collecting responses from members of the organization (¶¶ 1, 4); and performing an assessment process (¶¶ 6-7) including:

compiling the responses into a data format (¶¶ 6-7 – The responses are placed into a data format that is statistically meaningful),

sorting the compiled responses to identify at least one theme based on the responses having a high frequency of occurrence (¶¶ 7-36 – The most significant correlations are identified to later identify themes of importance. The most significant correlations are agreed to by a larger group of the individuals who provided feedback. The number of individuals who chose each response combination is effectively indicative of a frequency of occurrence of each particular response combination),

generating a report based on the identified at least one theme (¶¶ 7-36, ¶ 13 in particular),

selecting a first action corresponding to the identified at least one theme in reply to receiving the report (¶¶ 7-36),

collecting responses from members of the organization reflecting a performance of implementing the first action in the organization (¶¶ 22-37), and

[Claim 2] wherein the step of collecting responses further includes:

receiving data responses reflecting at least one individual interview session with at least one of the members (¶¶ 4, 42);

receiving data responses reflecting at least one focus group meeting associated with at least one of the members (¶¶ 4, 42); and

[Claim 3] wherein the step of compiling the responses includes:

separating the collected responses into groups (¶¶ 4, 7-36);

[Claim 4] wherein generating the report includes:

identifying ineffectual communication between employees and managers of the organization; and generating the report to include the identified ineffectual communication as the theme (¶¶ 12, 13, 18, 22, 26, 29);

[Claim 7] wherein performing the assessment process includes:

separating the collected responses into sets of responses (¶¶ 7-36); and

identifying a theme for each set of responses based on a frequency of occurrences of information included in each set of responses (¶¶ 7-36, 42 – The most significant correlations are identified to later identify themes of importance. The most significant correlations are agreed to by a larger group of the individuals who provided feedback. The number of individuals who chose each response combination is

effectively indicative of a frequency of occurrence of each particular response combination);

[Claim 8] identifying a theme for each set of responses based on responses to a set of qualitative questions (¶¶ 4, 7-36);

[Claim 41] wherein the first set of members are employees of the organization and the second set of members include managers of the organization (Discussions to obtain feedback are held among managers and staff, i.e., employees (as seen in ¶¶ 22-23 of Harke) and proposed solutions to the organization's identified weaknesses often involve improving communication among managers and staff (¶¶ 24-26));

[Claim 42] analyzing the collected data to select a second action to implement in the organization based on the effect of the implemented first action (¶¶ 22-26 – Follow-up meetings are conducted to reach further conclusions regarding potential approaches to improvement within the organization).

As per claim 1, while Harte discloses selecting a first action corresponding to the identified theme in reply to receiving the report (¶¶ 7-36), Harte does not explicitly disclose that such a step is performed "automatically." If "automatically" is interpreted to simply mean that the step of selecting is performed in immediate response to previous steps, then Harte does perform the step of "automatically" selecting a first action corresponding to the identified theme in reply to receiving the report since Harte performs this step in response to receiving responses from members of the organization. However, if "automatically" is interpreted as through use of a computer,

then Harte does not expressly disclose that the step of selecting a first action corresponding to the identified theme in reply to receiving the report is performed automatically. Official Notice is taken that it was old and well-known in the art of data processing to utilize a computer to perform calculations, data gathering, data analysis, and report generation [now admitted prior art]. The use of a computer facilitates more efficient, rapid, and less erroneous computations, data gathering, analysis, and reporting (as compared to human-performed operations) [now admitted prior art]. Since Harte analyzes statistical data, which often tends to require more involved mathematical calculations, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harte such that any or all of the recited steps are performed by a computer in order to facilitate more efficient, rapid, and less erroneous computations, data gathering, analysis, and reporting (as compared to human-performed operations). Further, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to automate the manual steps of Harte since it has generally been recognized that broadly providing an automatic means to place a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner* 262 F.2d 91, 95 120 USPQ 193, 194 (CCPA 1958). As a matter of fact, using a computer to perform steps that the prior art discloses as commonly performed manually is simply "the adaptation of an old idea or invention...using newer technology that is commonly available and understood in the art...," as explained in *Leapfrog Enterprises, Inc. v. Fischer Price, Inc.*, 485 F.3d 1157, 82 USPQ2d 1687 (Fed. Cir. 2007) at 1691. The Leapfrog decision "found it obvious to

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combine the Bevan device [an earlier, more basic prior art device] with the SSR [a system with more modern electronic components] to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost." (*Leapfrog*, at 1691) This decision further supports the Examiner's assertion regarding the obviousness of performing manual steps using a computer, as discussed above.

As per claim 1, Harke sorts collected responses to identify areas of concern based on employee feedback as well as customer satisfaction feedback (¶¶ 7-36, 42 – The most significant correlations are identified to later identify themes of importance. The most significant correlations are agreed to by a larger group of the individuals who provided feedback. The number of individuals who chose each response combination is effectively indicative of a frequency of occurrence of each particular response combination); however, Harke does not clearly sort the collected responses to identify an effect of the implemented first action on the organization based on the responses having a high frequency of occurrence. Official Notice is taken that it was old and well-known in the art of performance improvement for an organization to implement changes to improve the organization and then follow up to see if the changes have successfully improved the organization. Harke is open to receiving follow-up feedback from customers (i.e., "clients") to measure the success of customer satisfaction systems (¶ 42), thereby indicating that Harke is concerned with continuous organizational improvement; therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harke to perform the

step of sorting the collected responses to identify an effect of the implemented first action on the organization based on the responses having a high frequency of occurrence in order to encourage continuous improvements within an organization to keep the organization competitive as times change, thereby promoting employee and customer satisfaction.

Regarding claim 2, Harke discloses receiving data responses reflecting at least one individual interview session with at least one of the members and data responses reflecting at least one focus group meeting associated with at least one of the members (¶¶ 4, 42), yet Harke does not explicitly disclose receiving data responses associated with at least one physical walk around session with at least one of the members. However, Official Notice is taken that it was old and well-known in the art of assessing organizations to perform part of an assessment using data responses associated with a physical walk around session with at least one member of the organization [now admitted prior art]. Walking around an organization gives an evaluator a more hands-on and comprehensive view of what is truly going on within the organization [now admitted prior art]. Since Harke seeks to perform total quality management to address issues associated with organizational culture (¶ 1), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harke to receive data responses associated with at least one physical walk around session with at least one of the members in order to give an evaluator a more hands-on and comprehensive view of what is truly going on within the organization.

Regarding claim 5, Harke does not explicitly disclose that selecting the first action includes generating content on a Web page associated with the organization, that is accessible by a first set and a second set of members of the organization; however, Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to communicate information to various people via a Web page [now admitted prior art]. The use of Web pages to communicate information is a very fast and economical way of transmitting information to people located in various places, including locations throughout the world [now admitted prior art]. Discussions to obtain feedback are held among managers and staff (as seen in ¶¶ 22-23 of Harke) and proposed solutions to the organization's identified weaknesses often involve improving communication among managers and staff (¶¶ 24-26); therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harke such that selecting the first action includes generating content on a Web page associated with the organization, that is accessible by a first set and a second set of members of the organization in order to promote improved communications among managers and staff in a fast and economical manner.

Regarding claim 6, Harke does not explicitly disclose that the responses include data values associated with sets of quantitative questions and the method further includes determining an average data value for a first set of quantitative questions, determining an average data value for a second set of quantitative questions, and picking a theme based on the higher average data value. However, Harke does perform qualitative analysis to yield quantifiable, meaningful values (¶¶ 7-13). Harke

recognizes results that show "a range of responses varying from very positive to negative predictions about the future success of the company." (¶ 21) Discussions to obtain feedback are held among managers and staff (as seen in ¶¶ 22-23 of Harke) and proposed solutions to the organization's identified weaknesses often involve improving communication among managers and staff (¶¶ 24-26) Furthermore, Official Notice is taken that it was old and well-known in the art at the time of Applicant's invention to average quantitative responses from each of various groups being compared in order to assess a representative opinion of each respective group [now admitted prior art]. In Harke's environment, this would be implemented as a comparison of the average feedback provided by the staff versus the feedback provided by managers. Such an analysis would differentiate the perception of organizational culture between managers and staff, i.e., employees. In evaluations where a higher average feedback value is representative of an issue of greater importance or an issue requiring greater attention, it would be useful to pay closer attention to issues to which higher average feedback values are attributed. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Harke such that the responses include data values associated with sets of quantitative questions and the method further includes determining an average data value for a first set of quantitative questions, determining an average data value for a second set of quantitative questions, and picking a theme based on the higher average data value in order to provide greater insight into the differences in perception of organizational culture between managers and staff/employees and which issues are deemed more

important to each respective group of organizational members. This comprehensive assessment of the opinions of managers versus staff/employees will also likely serve to foster mutual understanding and improve communication among both groups of organizational members, thereby addressing the issue of communication, consistently raised as an area in need of improvement in Harke.

[Claims 9-12] Claims 9-12 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

[Claims 16-19] Claims 16-19 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

[Claims 23-26] Claims 23-26 recite limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

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[Claim 37] Claim 37 recites limitations already addressed by the rejection of claims 1-4 and 42 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

[Claim 39] Claim 39 recites limitations already addressed by the rejection of claims 1-4 above; therefore, the same rejection applies. The discussion of automating the recited steps through use of a computer is also found in the rejection of claim 1.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692